IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10937 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALLUBHAI DEVABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10937 of 2004

MR LR PATHAN for Petitioner No. 1

MR MOHD.HANIF SHAIKH for Petitioner No. 1

Mr. PR Abichandani, AGP for Respondent No. 1-3

..... for Respondent No. 4-11

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/02/2005

ORAL JUDGEMENT

Rule. Shri PR Abichandani, learned AGP waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 24.5.2004/29.5.2004 in Revision Application No. 14 of 1997 in dismissing the same and confirming the order passed by the Collector, Valsad dated 17.4.1997. Apart from merits of the case, Shri Pathan, learned advocate appearing for the petitioner has submitted that the impugned order dated 29.5.2004 passed by the Secretary (Appeals) in Revision Application No. 14 of 1997 is in breach of principles of natural justice. It is submitted that the hearing of revision application was kept on 24.5.2004 and as the learned advocate appearing on behalf of the petitioner was sick an application for adjournment was sent. Similarly, one Advocate appearing for respondents No. 2 to 9 had sent an application for adjournment, however the application for adjournment submitted by respondents No. 2 to 9 was not considered on the ground that the concerned Advocate had not filed his Vakalatnama, and so far as the application submitted by the learned advocate appearing on behalf of the petitioner is concerned, the same was rejected mainly on the ground that the applicant had not remained present and therefore the decision was taken ex-parte.

3. The aforesaid aspect of not hearing the petitioner and respondents No. 2 to 9 has not been disputed by Shri Abichandani, ld. AGP appearing on behalf of the State Government and the Collector. Normally, and by and large, if an application for adjournment is submitted on the ground that the concerned Advocate is sick, unless it is found that it is made with malafide intention and/or to overreach the process and/or to avoid the Court and/or to delay the proceedings, the same is required to be entertained and adjournment is required to be granted. Considering the fact that applications for adjournment were submitted on behalf of both the parties and more particularly considering the fact that the learned advocate appearing for the petitioner was sick on that date the authority ought to have granted time with a specific direction that on next date of hearing the matter will be proceeded further even in absence of learned advocate for the petitioner and/or any party. In the present case, there is no specific finding given by the authority to the effect that the application for adjournment was not genuine and/or the same is filed with a malafide intention or to overreach the process of the Court or to delay the proceedings.

4. Considering the aforesaid facts and circumstances of the case and in view of the fact that the ex-parte came to be passed without giving opportunity to the learned advocates appearing for the petitioner and respondents No. 2 to 9 herein, the impugned order dated 29.5.2004 passed in Revision Application No. 14 of 1997 is required to be quashed and set aside solely on this ground without going into the merits of the case.

5. For the reasons stated hereinabove, the impugned order dated 29.5.2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 14 of 1997 is hereby quashed and set aside. The matter is remanded to the Secretary (Appeals) for deciding the Revision Application afresh in accordance with law and on merits within the period of six months from the date of receipt of this order. Shri Pathan, ld. advocate has submitted that the petitioner would cooperate in early disposal of the revision application and application for adjournment will not be submitted on behalf of the petitioner on any ground. Until a decision is taken by the Secretary (Appeals), on remand, the parties are directed to maintain status-quo till then. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

rmr. [M.R. Shah, J.]